IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTIETH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION Nos. 13189 of 1994 & 17112 of 1994

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WRIT PETITION No.13189 of 1994:

Between:

R.Shyam Sundar, S/o mahadevappa, r/o 1/216, old Mothilal office compound III Road,
New town, Anathapur.

..... PETITIONER

AND

1 Chaiman cum Presiding officer, Industrial tribunal cum Labour Court, Anatapur.
2 Factory manager, The Rayalaseema Mills Ltd., Rayanagar, P.B.No.33, Adoni,

Kurnool Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records from the 1st respondent in I.D.No.240/91 and issue appropriate writ or direction particularly one in the nature of certiorari and quash the award passed by the 1st respondent in I.D.No.240/91 dt.03-05-1994 published on 30-6-1994 in so far as denying the back-wages and allow the WP by granting full back-wages with monetary benefits and with costs.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: MR.C.NIRANJAN RAO

WRIT PETITION No.17112 of 1994:

Between:

The Rayalaseema Mills Limited,

Adoni, Kurnool District, represented by

Its Chairman

..... PETITIONER

AND

1. The Industrial Tribunal-cum-Labour Court

represented by the Presiding Officer,

Anantapur, Ananthapur District

2. R.Shyam Sunder, S/o.Mahadevappa,

H.No.1-216, Old Mothilal,

Post Office Compound, III Road,

Ananthapur, Ananthapur District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or directions especially in the nature of writ of Certiorari calling for

the records relating to the Award dated 03.05.1994 in I.D.No.240/91 on the file of the 1st respondent herein and quash the same as illegal and unjust.

Counsel for the Petitioner: MR.C.NIRANJAN RAO

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: Mr.A.K.JAYAPRAKASH RAO

The Court made the following:

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COMMON ORDER:

Writ petition No.13189 of 1994 was filed by the workman questioning the award of the 1st respondent i.e. Industrial Tribunal-cum-Labour Court, Ananthapur (for short "Tribunal") dated 03.05.1994 in I.D.No.240 of 1991, for denial of back wages, having ordered reinstatement and continuity of service with other benefits, by setting aside the order of termination, issued by the Management i.e. the 2nd respondent.

2. Writ petition No.17112 of 1994 was filed by the Management (Rayalaseema Mills Limited, Adoni), questioning the very same award regarding the reinstatement of the workman with continuity of service and other benefits.

3. Since both the writ petitions are against the same order, passed by the Tribunal, both the writ petitions are clubbed together and this common order is passed.

4. The workman joined the service of the management on 16.11.1970 and he was terminated from the service through the order dated 10.08.1991 with effect from

14.10.1987. The workman contended that the management removed his name from the muster roll, without giving him any opportunity or notice, and it amounts to retrenchment in violation of Section 25-F of the Industrial Disputes Act, 1947.

5. The workman further contended that the 1st respondent (Tribunal) having held that the action of the management amounts to retrenchment, erroneously denied the back wages on untenable grounds. Therefore, he is entitled for back wages for the period from the date of termination till the date of reinstatement.

6. The management contended that he transferred the workman, along with 59 others, to Spinning Department, within the same premises of the factory, with effect from 13.09.1987, due to shortage of hank yarn and excess workmen in the Reeling Department. The workman applied leave for one day i.e. on 12.09.1987. He was absent on 14.09.1987 and 15.09.1987. Subsequently from 16.09.1987 to 23.09.1987, he reported E.S.I sick. When he reported to duty on 25.09.1987, he was asked to work in spinning department. But the workman refused to work, and left the premises of the factory, and subsequently, he did not turn up for work. Later, the workman filed I.D.No.43 of 1988 under Section 2-A (2) of the Industrial Disputes Act in the Tribunal (1st respondent), seeking direction to the management, to allow him to work in the Reeling Department. The said I.D. was dismissed on 24.09.1990, as not maintainable.

7. Later the workman raised an Industrial Dispute before the Conciliation Officer, and on failure of conciliation, the same was referred to the Tribunal, and the same was numbered as I.D.No.240 of 1991. The management settled the account of the workman and sent a cheque for Rs.8,811-16ps through a letter dated 10.08.1991. Subsequently the Tribunal passed the impugned order, without recording any evidence, or, marking any documents as exhibits. Therefore, the award is liable to be quashed by confirming the order of the management.

8. After carefully going through the record, it is noticed that the management did not follow the procedure prescribed under the provisions of the Industrial Disputes Act, more particularly Section 25-F of the Act, and it abruptly passed the impugned order. Therefore, the Tribunal rightly held that the removal of the name of the petitioner from the muster roll amounts to retrenchment.

9. The Tribunal after entertaining the dispute ought to have followed the

procedure by way of giving opportunity to both parties to adduce evidence, and to advance their arguments. But the Tribunal passed the award only on the basis of the pleadings of the respective parties, without giving any opportunity to both parties to adduce evidence. The order of the Tribunal is vitiated by virtue of Judgment of the Division Bench of this Court in ***G.M.Area-I, R.G.Div.Singareni Collieries Co.Ltd. v. Presiding Officer, Industrial Tribunal-I, Hyderabad***. Therefore, the order of the Tribunal is liable to be quashed.

10. Since the order of the management is also illegal, it would be appropriate to strike a balance in the light of the irregularities committed by the management, as well as the Tribunal.

11. It is further noticed from the record that after ordering the reinstatement by the Tribunal, the petitioner did not report to duty, and sent a regret letter by saying that he is unable to report to duty due to his ill health. Therefore, he did not join the employment of the management.

12. In the light of those circumstances, this Court is not inclined to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India to interfere with the orders of the Tribunal. Therefore, the Writ Petition No.17112 of 1994 is liable to dismissed.

13. Since the workman did not evince any interest to continue in the service of the management, and did not report to duty after the award of the Tribunal, he is not entitled for back wages. Therefore, the Writ Petition No.13189 of 1994 is also liable to be dismissed.

14. The learned counsel for the workman submitted that since the Tribunal ordered reinstatement of the petitioner with continuity of service, it shall be left open to the workman to work out his rights regarding the continuity of service for the period from the date of his resignation letter till the date of acceptance of his resignation. But, since the workman did not resume duty till the acceptance of his resignation, he is not entitled for the benefit of continuity of service from the date of his resignation letter till the date of its acceptance.

15. In the light of the above discussion, both the writ petitions are dismissed. No order as to costs.

dsr/svs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To:

1. The Chairman-cum-Presiding Officer,

Industrial Tribunal-cum-Labour Court,

Ananthapur

2. Two CCs to the Government Pleader for Labour,

High Court Buildings, Hyderabad (OUT).

3. Two CD copies.